MONTANA LEGISLATIVE HISTORY

Chapter 432 1983

Bill H 245 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	1/18	C	Hearing Date(s)	2/7	C
	1/18	C		2/8	C
		C		3/11	C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HEARING: 1/31/83
REPORT: 02/01/83, DO PASS
2ND READING: 02/03/83, DO PASS AYES: 85; NAYS: 0
3RD READING: 02/05/83, DO PASS AYES: 80; NAYS: 10

TRANSMITTED TO SENATE: 2/5/83
REFERRED TO COMMITTEE ON FINANCE & CLAIMS: 02/07/83
HEARING: 2/11/83
REPORT: 02/12/83, BE CONCURRED IN
2ND READING: 02/15/83 AYES: 49; NAYS: 0
3RD READING: 02/17/83 AYES: 50; NAYS: 0

RETURNED TO HOUSE: 02/17/83

TRANSMITTED TO GOVERNOR: 02/21/83
SIGNED: 2/22/83

HB 244 -- FABREGA, CHRISTIAENS -- LIMITING THE APPLICATION OF THE RULE OF 78THS METHOD OF COMPUTING INTEREST AND REFUNDS ON PREPAYMENT TO LOANS AND RETAIL INSTALLMENT CONTRACTS MADE FOR A TIME PERIOD OF NOT MORE THAN 61 MONTHS; AMENDING SECTIONS ...; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY CLAUSE.

INTRODUCED: 01/14/83
REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY: 01/14/83
HEARING: 1/25/83
REPORT: 01/25/83, DO PASS, AS AMENDED
2ND READING: 01/27/83, DO PASS AYES: 90; NAYS: 1
3RD READING: 01/29/83, DO PASS AYES: 88; NAYS: 0

TRANSMITTED TO SENATE: 1/29/83
REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY: 01/31/83
HEARING: 3/4/83
REPORT: 03/04/83, BE CONCURRED IN
2ND READING: 03/07/83 AYES: 48; NAYS: 0
3RD READING: 03/09/83 AYES: 49; NAYS: 0

RETURNED TO HOUSE: 03/10/83

TRANSMITTED TO GOVERNOR: 03/15/83
SIGNED: 3/18/83, CHAPTER 135

HB 245 -- ADDY, J. JENSEN, BERGENE -- TO EXPAND THE GEOGRAPHICAL AREA THAT MAY BE COVERED BY CONTRACTS NOT TO COMPETE AND TO PROVIDE THAT SUCH CONTRACTS MAY NOT COVER LICENSED PROFESSIONS AND OCCUPATIONS; AMENDING SECTIONS ....

INTRODUCED: 01/14/83
REFERRED TO COMMITTEE ON JUDICIARY: 01/14/83
HEARING: 1/18/83
REPORT: 01/18/83, DO PASS, AS AMENDED
2ND READING: 01/21/83, DO PASS AYES: 91; NAYS: 3
3RD READING: 01/24/83, DO PASS AYES: 92; NAYS: 7

TRANSMITTED TO SENATE: 1/24/83
REFERRED TO COMMITTEE ON JUDICIARY: 01/25/83
HEARING: 2/7/83
REPORT: 02/08/83, BE NOT CONCURRED IN

ON MOTION, RETURNED TO SENATE 02/10/83 FOR FURTHER CONSIDERATION.
REFERRED TO COMMITTEE ON JUDICIARY: 02/11/83.
HEARING: 3/1[illegible]/83
REPORT: 03/11/83, BE CONCURRED IN, AS AMENDED
2ND READING: 03/14/83 AYES: 49; NAYS: 0
3RD READING: 03/16/83 AYES: 46; NAYS: 1

RETURNED TO HOUSE WITH AMENDMENTS: 03/16/83
2ND READING: 03/30/83, BE CONCURRED IN AYES: 86; NAYS: 0
3RD READING: 03/31/83, BE CONCURRED IN AYES: 93; NAYS: 0

TRANSMITTED TO GOVERNOR: 04/08/83
SIGNED: 04/11/83, CHAPTER 432

HB 246 -- MUELLER, THOFT, NILSON, ET AL. -- TO PROVIDE FOR STAGGERED TERMS FOR MEMBERS OF THE BOARD OF PARDONS; AMENDING SECTION ....
BY REQUEST OF: THE TASK FORCE ON CORRECTIONS

INTRODUCED: 01/14/83
REFERRED TO COMMITTEE ON JUDICIARY: 01/14/83
HEARING: 1/24/83
REPORT: 01/25/83, DO PASS
2ND READING: 01/27/83, DO PASS AYES: 94; NAYS: 1
3RD READING: 01/29/83, DO PASS AYES: 90; NAYS: 0

TRANSMITTED TO SENATE: 1/29/83
REFERRED TO COMMITTEE ON JUDICIARY: 01/31/83
HEARING: 2/8/83
REPORT: 02/08/83, BE NOT CONCURRED IN
BILL KILLED

HB 247 -- RYAN, MANNING, ERNST -- TO APPROPRIATE $21,554 FROM THE STATE EQUALIZATION AID ACCOUNT TO REIMBURSE PETROLEUM COUNTY SCHOOL DISTRICTS FOR STATE EQUALIZATION AID TO WHICH THE DISTRICTS WERE ENTITLED IN THE 1981-82 SCHOOL FISCAL YEAR; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

INTRODUCED: 01/14/83
REFERRED TO COMMITTEE ON APPROPRIATIONS: 01/14/83
HEARING: 2/4/83
REPORT: 02/16/83, DO PASS
2ND READING: 02/18/83, DO PASS AYES: 92; NAYS: 1
3RD READING: 02/21/83, DO PASS AYES: 100; NAYS: 0

TRANSMITTED TO SENATE: 2/21/83
REFERRED TO COMMITTEE ON FINANCE & CLAIMS: 3/1/83
HEARING: 3/11/83
REPORT: 03/11/83, BE CONCURRED IN
2ND READING: 03/14/83 AYES: 49; NAYS: 0
3RD READING: 03/16/83 AYES: 47; NAYS: 0
RETURNED TO HOUSE 3/16/83

TRANSMITTED TO GOVERNOR: 03/23/83
SIGNED: 03/28/83

HB 248 -- FABREGA, TOWE, HAGER -- TO PROVIDE THAT A COUNTY OR AN INCORPORATED CITY OR TOWN MAY ESTABLISH BY RESOLUTION EXCEPTIONS THAT WOULD REDUCE OR ELIMINATE THE STATUTE REQUIRING 600 FEET TO SEPARATE THE PREMISES OF A BUSINESS THAT SERVES ALCOHOLIC

HOUSE BILL NO. 245

INTRODUCED BY ADDY, J. JENSEN, BERGENE

IN THE HOUSE

January 14, 1983	Introduced and referred to Committee on Judiciary.
January 18, 1983	Committee recommend bill do pass as amended. Report adopted.
	Bill printed and placed on members' desks.
January 20, 1983	Second reading, pass consideration.
January 21, 1983	Second reading, do pass.
January 22, 1983	Considered correctly engrossed.
January 24, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

January 25, 1983	Introduced and referred to Committee on Judiciary.
February 8, 1983	Committee recommend bill be not concurred in. Report adopted. Ayes, 48; Noes, 0.

IN THE HOUSE

February 8, 1983	Returned to House.
February 10, 1983	On motion, request of Senate granted for return of H. B. No. 245 for further consideration.

IN THE SENATE

February 10, 1983	Rereferred to Committee on Judiciary.
March 11, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 14, 1983	Second reading, concurred in.
March 16, 1983	Third reading, concurred in. Ayes, 46; Noes, 1.

IN THE HOUSE

March 16, 1983	Returned to House with amendments.
March 30, 1983	Second reading, amendments concurred in.
March 31, 1983	Third reading, amendments concurred in.
	Sent to enrolling.
	Reported correctly enrolled.

House BILL NO. 245

INTRODUCED BY Addy J. Iverson Bergene

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXPAND THE GEOGRAPHICAL AREA THAT MAY BE COVERED BY CONTRACTS NOT TO COMPETE AND TO PROVIDE THAT SUCH CONTRACTS MAY NOT COVER LICENSED PROFESSIONS AND OCCUPATIONS; AMENDING SECTIONS 28-2-704 AND 28-2-705, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 28-2-704, MCA, is amended to read:

"28-2-704. Exception -- sale of goodwill of business. One who sells the goodwill of a ~~profession, trade, or~~ business may agree with the buyer to refrain from carrying on a similar ~~profession, trade, or~~ business within a ~~specified--county,--city,--or--part~~ any state or territory of the United States or the District of Columbia or any part or parts thereof so long as the buyer or any person deriving title to the goodwill from him carries on a like ~~profession, trade, or~~ business therein. ~~However, such an agreement may not be made when the seller is selling the goodwill of a profession or occupation for which a license is required under Title 37.~~"

Section 2. Section 28-2-705, MCA, is amended to read:

"28-2-705. Exception -- dissolution of partnership. Partners may, upon or in anticipation of a dissolution of the partnership, agree that none of them will carry on a similar ~~profession, trade, or~~ business within ~~the--same--city--or--town--where--the--partnership--business--has--been--transacted--or--within--a--specified--part--thereof~~ any state or territory of the United States or the District of Columbia or any part or parts thereof. ~~However, such an agreement may not be made as to a profession or occupation for which a license is required under Title 37.~~"

-End-

STATUS SHEET

JUDICIARY COMMITTEE

48 Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
238	Providing liens attaching to a private dwelling for material, machinery or fixtures must be decreased in amount for that payment for the material.	1/14/83	Rep. Vincent	1/26/83	Tabled	2/7/83
245	Expanding geographical area that may be covered by contracts not to compete and to provide such contracts may not cover licensed professions and occupations.	1/14/83	Rep. Addy	1/18/83	Do Pass as Amended	1/18/83
246	Providing for staggered terms for members of the Board of Pardons.	1/14/83	Rep. Mueller	1/24/83	Do Pass	1/25/83
250	Providing mandatory term of imprisonment in the cty. jail upon a 1st conviction for driving under influence of drugs or alcohol.	1/14/83	Rep. Vincent	1/26/83	Do Pass as Amended	2/16/ 83
251	To remove the county residency requirement for obtaining a marriage license; amending Section 40-1-201, MCA.	1/14/83	Rep. Sales	1/19/83	Do Pass	1/19/83
257	Adopting the American Bar Association's model act on professional corp. and repeal the laws regulating corp. that render professional services.	1/17/83	Rep. Ramirez	1/24/83	Do Pass as Amended	1/25/83

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MINUTES OF THE JUDICIARY COMMITTEE
January 18, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown at 8:00 a.m. in Room 224A of the Capitol. All members were present except Rep. Farris, who was excused. Brenda Desmond, Legislative Council, was present.

HOUSE BILL 170

REP. PISTORIA, sponsor, stated House Bill 170's purpose is to add to the list of places to which an intoxicated person may be taken for help and to provide that persons aiding the intoxicated person are not civilly liable if they act within the scope of the law.

REP. PISTORIA read to the committee a memorandum from Neil Ugrin concerning the bill. EXHIBIT A and B.

HAROLD SHOOT was a proponent of the bill. SHOOT stated the way the present law reads makes it easy to forget about the person. There is a need for those assisting intoxicated persons to exercise judgement without having to worry about being liable in their actions.

There were no further proponents.

KARLA GRAY, Montana Trial Lawyers, was opposed to the bill. She stated the Association understands the concerns of the medical community. However, the Montana Constitution provides for a right of access to the courts. If this bill were passed, it would limit the rights of the intoxicated party. The bill is very broad in scope. It is not clear when the exemptions would begin or end; when a person is intoxicated and when he is not. How long would the good faith rule apply?

There were no further opponents.

In closing, REP. PISTORIA stated he felt the bill would help protect the intoxicated person.

REP. KEYSER asked if a person is not liable for his actions, regardless of the bill, couldn't the intoxicated person file suit? GRAY responded yes, a person could file charges and take his chances.

REP. J. BROWN stated there are so many places listed to take the person, how would you know which one to choose? SHOOT replied this would give the assisting party options. Many communities do not have all the options.

REP. PISTORIA added in the present law it is mandatory to take the person to some location that day. Sometimes, however, because of inclement weather, it is impossible to

REP. ADDY asked what if both the tenant and the landlord paid money into the court. The witnesses felt that it would be absurb for the landlord to pay rent on his own place. MORALES stated the tenant should either pay the rent or move out.

REP. DAILY suggested that if a tenant had a situation, such as faulty plumbing, that the landlord refused to fix, the tenant would want to withhold rent until the landlord repaired the plumbing. REHBERG replied the Landlord Tenant Act covers those types of situations. CAREY added if the tenant repaired the plumbing himself, the parts needed could be deducted from the rent according to the Landlord Tenant Act.

The hearing on House Bill 220 ended.

HOUSE BILL 245

REP. ADDY, sponsor, stated House Bill 245 will expand the geographical area that may be covered by contracts not to compete and to provide that such contracts may not cover licensed professions and occupations.

REP. ADDY stated the bill is the result of a Montana Supreme Court case. The original law was passed in 1895 and has not been amended since that time. It is a concept of the marketing area. Since tht time the trade area has grown, but the law has not grown with it. In the 1980 case of Treasure Chemical Inc. v. Team Laboratory Chemical Corporation, the court stated that intercity and interstate businesses are common today and in some circumstances it is reasonable to enforce covenants not to compete that cover the boundaries of an entire state. The Supreme Court has recommended that the legislature examine the law and decide if changes are appropriate.

The bill will change the geographic boundaries of the area within which a covenant not to compete will be enforced from a county to any state or territory of the United States or part thereof. Billings and Missoula are the best examples of areas where the marketing area actually crosses the state boundry.

Professionals have developed a loyal clientale. The clients may not be interested in going to another professional in the same field. If they were not exempt from the provisions of the law, and they had made a covenant not to compete, they would have to move beyone the limits - 100 miles away - of the city. This bill focuses on professionals who have a unique skill, such as doctors, veterinarians, dentists or lawyers, that dictates the choice of the consumer.

REP. ADDY offered EXHIBIT C.

There were no proponents or opponents for House Bill 245.

REP. KEYSER asked what professions are licensed under Title 37. REP. ADDY replied professions such as medicine, nursing, dentistry, physical therapy, speech pathology, among others.

REP. EUDAILY asked if the amendments were incorporated into the bill, would the law apply to the groups previously listed. REP. ADDY stated he is trying to prevent someone bargaining away in advance their right to carry on a trade in that area. If a practice is sold or dissolved, the sponsor did not have an objection as to what the parties bargained to.

REP. HANNAH asked what was the difference between bargaining away before the sale or at the time of sale. REP. ADDY replied a covenant is signed stating you will not practice within 100 miles of the area. When they bargain at the time of the sale of the business, both parties know what their relative bargaining position is.

There were no further questions on the bill. The hearing of House Bill 245 ended.

The committee then went into Executive Session.

EXECUTIVE SESSION

HOUSE BILL 139

CHAIRMAN BROWN appointed the following House Judiciary members to serve on a subcommittee to amend House Bill 139 as it was sent back from the Committee of the Whole: REP. EUDAILY, who will serve as Chairman, REP. RAMIREZ and REP. SPAETH.

HOUSE BILL 10

CHAIRMAN BROWN noted that city attorneys would like to be able to attend training sessions as noted in House Bill 10; however, the committee did not amend the bill as such because of the concern as to who would pay for their attendance. It was also felt that allowing the city attorneys to attend was not within the scope of the bill.

REP. BERGENE moved the committee draft a committee bill allowing the city attorneys to attend such training sessions at their own expense. REP. J. BROWN seconded the motion. All were in favor of the motion.

HOUSE BILL 245

REP. ADDY moved DO PASS, seconded by REP. JENSEN.

REP. ADDY moved to amend the bill by striking on line 20, page 1 the remainder of section 1 begining with "however." On page 2, line 1, strike "or in anticipation of." Page 2, line 2, strike "none" and insert "one or more." Page 2 following "them" strike "will" and insert "may not." REP. ADDY also moved the title be amended to reflect the changes. The motion was seconded by REP. BERGENE.

REP. EUDAILY asked if the result of deleting the material would be that a professional person could not sell his practice, move and be able to open up a similar practice in another town. REP. ADDY stated it would be up to the two parties involved. If that was their agreement, that is what would happen. At the time of the sale it would have to be determined if the selling party was selling his practice or just his library. Presumably, the person who has bought the practice would not care if the seller moved and began another practice.

REP. EUDAILY asked why it was not possible to do this now. REP. ADDY responded the present law will only allow the parties to make an agreement to the borders of a county.

REP. DAILY noted if a doctor in Missoula sold his practice and then moved to Hamilton to establish another practice, those patients could just as easily drive to Hamilton for appointments. REP. ADDY noted that expansion of the geographic area primarily affects businesses that operate on a regionwide basis such as heavy equipment businesses. Because these businesses do business in a wide area, the size of the geographic area which can be covered by a covenant not to compete should be expanded.

REP. HANNAH asked what if he, as a seller, agrees not to compete in an area larger than a county but then does compete there; what would be the consequences? REP. ADDY stated the contract would be null and void and not enforceable because it violates Section 28-2-704.

REP. RAMIREZ stated the bill does not state it would enforce all these restrictions. All laws need to be enforced. Even though the bill states "profession, trade or business," it limits it to a business and not the sale of a professional trade. Since the bill expands the area to the United States and its territories, we are permitting more contracts that are in trade. The statute states there is a general prohibition that contracts that restrict trade are generally void. With this bill, we are making exceptions to that. The exceptions that we do have to this law are very narrow today.

REP. RAMIREZ further stated that the bill would broaden the present statute too much. If a business is sold it is unreasonable for the buyer not to want the seller to not practice anywhere in the state.

REP. ADDY moved to strike the added language "profession, trade or,". Instead of any state or territory, amend the bill to say the "State of Montana or any part thereof."

REP. RAMIREZ felt that is an improvement. He stated, however, if he were to propose this type of change he would research every case to see if there are some standards to determine what is an acceptable agreement.

REP. CURTISS asked if other states have this type of law. REP. ADDY stated the original law Montana adopted in 1895 was modeled after California law. He did not know if the California law has been amended since that time.

It was noted the bill would be retroactive only if the bill sepcifically states so.

A roll call vote was taken on the amendment. All members voted in favor of the amendment except REP. FARRIS and REP. SEIFERT, who were absent during the voting.

REP. ADDY moved to strike referenses to "profession, trade, or" throughout the bill and to substitute "State of Montana or any part thereof" for "any state or territory of the United States or the District of Columbia or any part or parts thereof." All were in favor of the amendment. The final amendments adopted are as in EXHIBIT D.

REP. EUDAILY moved the committee pass the bill for the day until the amendments as approved by the committee could be drafted into the bill.

A roll call vote resulted. Those voting in favor to delay final action on the bill were: CURTISS, EUDAILY, KENNERLY and VELEBER. Those voting no were: D. BROWN, ADDY, BERGENE, DARKO, IVERSON, JENSEN, KEYSER, RAMIREZ, SCHYE, and SPAETH. The motion failed 11 to 4.

REP. ADDY moved DO PASS AS AMENDED, seconded by REP. BERGENE. The motion resulted in a roll call vote. Those voting yes were: D. BROWN, ADDY, BERGENE, J. BROWN, DAILY, DARKO, IVERSON, JENSEN, KEYSER, SCHYE, SPAETH, and VELEBER. Those voting no were: CURTISS, EUDAILY, HANNAH, RAMIREZ, and SEIFERT. The motion of DO PASS AS AMENDED carried 12 to 6.

Mr. Chairman, I move to amend HB 245 as follows

Page 1, line 20: strike the remainder of Section 1 beginning with "However,"

Page 2, line 1: strike "or in anticipation of a"

Page 2, line 1: strike the remainder of Section 2 beginning with "However"

Page 2, line 2
Strike: "more"
insert: any one or number
after: "wild"
insert: "not"

Kelly Addy

Exhibit C
HB 245
1/18/83

Exhibit D
HB 245
1/18/83

Amendments to HB 245

1. Title, line 6
following: "COMPETE"
Strike: "AND TO PROVIDE THAT SUCH CONTRACTS MAY NOT COVER LICENSED PROFESSIONS AND OCCUPATIONS"
Insert: "AND TO PROVIDE THAT ~~CONTRACTS TO COMPETE~~ WHEN SUCH CONTRACTS CONCERN PARTNERSHIPS THEY MAY ONLY BE MADE UPON DISSOLUTION OF PARTNERSHIP"

2. page 1, line 13
following "a"
strike: "profession, trade, or"

3 page 1, line 15
following "similar"
strike: "profession, trade, or"

4 page 1, lines 16 ~~and~~, 17 and 18
following "part"
strike: any state or territory of the United States or the District of Columbia or any part or parts
Insert: "the state of Montana or any part"

page 1, lines 19 and 20
following: " like "
strike: " profession, trade, or "

page 1, lines 20-23
following: "therein."
strike: " However, such an agreement may not be made when the seller is selling the goodwill of a profession or occupation for which a license is required under Title 37. "

page 2, line 1.
following: " upon "
strike: " or in anticipation of a "
~~insert: " dissolution of~~

page 2, line 2
following: " that "
strike: " none "
insert: "one or more"

page 2, line 2
following " them "
strike: " will "
insert: " may not "

48th LEGISLATIVE SESSION

COMMITTEE ON Senate Judiciary

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO NOT DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
HB149	2-11-83	3-22-83	3-22-83						3-22-83
HB150	1-20-83	2-7-83	3-2-83					3-2-83	
HB179	1-27-83	3-14-83	3-14-83					3-14-83	
HB179	3-17-83	3-17-83	3-17-83					3-17-83	
HB191	2-7-83	3-23-83	TABLED						
HB194	2-19-83	3-9-83	3-10-83				3-10-83		
HB210	1-31-83	3-2-83	TABLED						
HB215	1-26-83	3-19-83	3-14-83					3-19-83	
HB220	2-18-83	3-10-83	3-12-83						3-12-83
HB234	2-2-83	3-8-83	3-8-83				3-8-83		
HB234	3-11-83	3-12-83	3-12-83					3-12-83	
HB235	1-25-83	2-7-83	2-7-83					2-7-83	
HB245	1-25-83	2-7-83	2-8-83						2-8-83
HB245	2-11-83	3-11-83	3-11-83					3-11-83	
HB246	1-31-83	2-8-83	2-8-83						2-8-83
HB250	3-1-83	3-9-83	3-10-83					3-10-83	

(Use Separate Sheet for Senate, House Bills, and Resolutions)

6

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 7, 1983

The twenty-third meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on February 7, 1983 at 10:10 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present, except for Senator Daniels who was excused.

CONSIDERATION OF HOUSE BILL 150: Representative Peck, sponsor of this bill, advised it was being introduced at the request of an organization referred to as H.E.L.P. Under this bill, jurisdiction would be given to the Justice Courts to handle first offense criminal possession of marijuana cases. HB150 would also change the penalties imposed for this offense.

PROPONENTS: Marc Racicot, representing the County Attorney's Association, supported the bill and stated it would relieve the district courts of the time spent on these violations and give the misdemeanor possession cases the attention they deserve.

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

Senator Galt expressed concern about the wording of the penalty. He asked Representative Peck if it is his intention that the first time offender should not be imposed a sentence. Representative Peck felt a sentence should be imposed with a deferred condition and Marc Racicot concurred with this assessment of the wording in the bill.

Chairman Turnage was also concerned with the wording of the penalty provision and felt there was an internal conflict between page 2, line 23 and page 3, line 19. He was also concerned with the wording on page 3, subsection (5), as he felt this may be interpretted to mean that a law enforcement officer has permission to smoke marijuana. He suggested changing this language to be more clear.

There being no further discussion by the committee, the hearing was closed.

CONSIDERATION OF HOUSE BILL 235: Representative Nilson, sponsor of this bill, advised it was being introduced at the request of the Department of Institutions to repeal those sections of the

OPPONENTS: Bill Opitz, representing the Public Service Commission, stated he was neutral on this issue. He stated there was a difference in qualifications between a public service and tax appeal board reporter and a district court reporter; hence, the difference in their charging for transcripts. He felt it would be unfair to other state employees for the aforementioned reporters to charge for transcripts produced on state time when other state employees couldn't charge for state work. A letter from the attorney general was then distributed (Exhibit "A") which states his disapproval of the above.

Robert S. Raundal, Chairman for the State Tax Appeal Board, stated his opposition to this bill. He specifically noted its unfairness to other employees and its fiscal impact. He also voiced concern for the word "shall" on page 1, line 23 as it applies to the reporter attending all board hearings.

There being no further proponents or opponents, the hearing was opened to discussion by the Committee.

The Committee questioned how often weekend and evening hearings were held and were advised that this can be required quite often at which time the hearing reporters were paid overtime. Senator Mazurek asked if the hearing reporters ever hired private typists for transcripts and was advised that this seldom, if ever, happens.

The Committee questioned the salaries of district court reporters as compared with hearing reporters and the differences in qualifications. Senator Berg was concerned with the fiscal note, but Senator Mazurek advised it would not have that drastic of an impact and that the important point to consider was the accuracy in transcripts.

There being no further discussion, the hearing was closed.

CONSIDERATION OF HOUSE BILL 245: Representative Addy, sponsor, opened his presentation by stating there are conflicting philosophies of the law about people entering into contracts. The purpose of HB245 is to allow people selling a business to agree not to compete with the new buyer, and to give force and effect to that agreement anywhere within the state.

There being no proponents or opponents present, the hearing was opened to questions from the Committee.

The Committee discussed how this bill would be applied to professionals, such as doctors, and Representative Addy explained that its intent is to deal with businesses and not professions. The Committee also discussed the geographical area the bill would encompass and Representative Addy advised that he would not object to flexible language in this area.

There being no further discussion, the hearing was closed.

ACTION ON SENATE BILL 26: Senator Mazurek explained the effective dates section of the bill. He then moved to amend SB26 in total as set forth in the "grey" copy. This motion passed unanimously. Senator Mazurek then moved that SB26 DO PASS AS AMENDED. This motion also passed unanimously.

FURTHER CONSIDERATION OF SENATE BILL 138: Senator Mazurek suggested taking out the provisions by which the Secretary of State's Office sets the fees for the Clerk and Recorders and also suggested putting back the sections which provide for buyer protection to farmers. Senator Turnage recommended taking out the non-uniform amendments referring to the Secretary of State's Office. The Committee felt that the UCC statutory filing fees should be left as they are since no problems have been relayed to them concerning the amount of this fee. Senator Mazurek then suggested that counsel work with Greg Petesch when preparing the amendments.

ACTION ON SENATE BILL 177: Counsel distributed amendments and reviewed them with the Committee. The critical language of the amendment was paragraph 4 which would limit the amount of wages subject to garnishment. This was discussed and the Committee felt that it was necessary to be consistent with federal law. Senator Crippen moved to adopt the amendments as proposed. This motion passed unanimously. Senator Crippen then moved SB177 DO PASS AS AMENDED. This motion passed with Senator Shaw voting in opposition.

ACTION ON SENATE BILL 248: Proposed amendments were distributed and explained by counsel. The main intent was to leave the prosecuting attorney with authority to raise the issue of fitness to proceed and to provide for disposition of those defendants found unfit to proceed. The Committee felt that John Maynard's concerns were being preserved and therefore Senator Berg moved to adopt the amendments as proposed. This motion passed unanimously. Senator Berg then moved SB248 DO PASS AS AMENDED. This motion carried with Senator Crippen voting in opposition.

ACTION ON SENATE BILL 290: Senator Berg drew attention to the fact that Section 13-35-202, as cited in the bill, should be amended to read Section "13-25-202" in the title and on page 2, line 4. This motion was then proposed and adopted unanimously. Senator Brown discussed the philosophy of election of representatives versus senators and stated we would be the only state in the country to adopt different election standards if this bill were passed. He then moved that SB290 DO NOT PASS. Senators Galt, Hazelbaker, Crippen and Shaw opposed the motion. Senator Brown withdrew his motion and Senator Shaw moved SB290 DO PASS AS AMENDED. This motion carried with Senators Brown, Halligan, Mazurek and Berg voting in opposition.

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983 Date 2-18

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)			✓
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

Each day attach to minutes.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 8, 1983

The twenty-fourth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on February 8, 1983 at 10:07 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 246: Representative Mueller, sponsor, advised that this bill was being introduced at the request of the Task Force on Corrections. It is their feeling that there is a need to provide staggered four year terms for members of the Board of Pardons. The purpose of this request is for continuety and to treat everybody fairly.

PROPONENTS: Hank Burgess, Chairman of the Board of Pardons, spoke as a proponent to HB246 and stated that the Board could best be filled by staggered appointments. He felt the bill has merit, but admitted to there being some organization problems with it.

OPPONENTS: Mona Jamison, legal counsel to Governor Schwinden, was strongly opposed to the bill and cited Section 2-15-2402(2) which provides that the governor has the authority to appoint members to the board at the beginning of his term so as to have his policies reflected through his appointees. This section also provides for one person to be appointed during mid-term to provide for continuity.

There being no further proponents or opponents, the hearing was opened to discussion by the Committee.

Senator Brown questioned how many board members there are and their method of appointment. Mona Jamison advised there are four and one is appointed during mid-term.

Representative Mueller closed by reiterating the need for continuity on this board since they are dealing with human beings.

There being no further discussion, the hearing was closed.

CONSIDERATION OF HOUSE BILL 119: Representative Mueller, sponsor, advised that this bill is being introduced at the request of Judge Holter. This legislation is permissive and not an absolute requirement, but gives the court a standard (the

ACTION ON HOUSE BILL 245: The Committee did not like the concept of the bill, which could allow the entire state to be closed to competition if the seller of the business did not read the contract carefully. Senator Crippen moved HB245 BE NOT CONCURRED IN. This motion passed unanimously.

FURTHER CONSIDERATION OF HOUSE BILL 150: The Committee discussed the intent of the bill and questioned if it would include municipal courts, as well as justice courts, to have jurisdiction over misdemeanor possession of marijuana cases. The penalties as worded in the two separate sections of the bill were again discussed and Senator Mazurek felt they were worded to provide that the court could impose both a fine and jail time sentence. Senator Crippen didn't see any inconsistency with the wording of the sentences. The Committee did see a need to strike section (6) in its entirety on page 3 and to amend the title accordingly so as not to cause any misinterpretation that law enforcement officers could smoke marijuana. Senator Crippen moved to adopt the amendments as above proposed. This motion passed unanimously. Senator Mazurek then suggested deferring further consideration until the penalty provisions could be researched further.

There being no further business before the committee, the hearing was adjourned at 11:55 a.m.

JEAN A. TURNAGE
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983 Date 2-8-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

February 8, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration House Bill No. 245

Addy

Respectfully report as follows: That House Bill No. 245

(Third Reading)

BE NOT CONCURRED IN

~~DO PASS~~

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

HC

24

MINUTES OF THE MEETING
SENATE JUDICIARY COMMITTEE
March 11, 1983

The fortieth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on March 11, 1983, at 10:09 a.m., Room 325, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 507: Representative Hannah opened by stating that he was supporting this bill at the request of the Justice of the Peace in Billings, Montana. Representative Hannah feels this bill is necessary because it has been many years since the fees have been raised. The increase is necessary to cover the increasing costs incurred by the court. Representative Hannah pointed out to the Committee that on page 2, line 1, the $5 fee needed to be amended to $10 to be consistent with the rest of the bill.
PROPONENTS: Marcel Turcotte, representing the Montana Magistrates Association, stated that he supports HB507. He stated the $1 filing fee for writs of execution would also help defer costs. Mr. Turcotte also pointed out that due to a lack of time on the part of the Justices of the Peace, it would be helpful if Clerks of Court could witness signatures to complaints. Mr. Turcotte asked the Committee for a do pass recommendation.

There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

Senator Halligan inquired as to whether this bill applied to small claims courts and was told it did. Senator Turnage inquired whether there was any charge for issuing a writ of execution since most writs of execution are issued rather than filed. He was told no.

CONSIDERATION OF HOUSE BILL 429: Representative Hannah testified that firearms being fired within city limits is a big problem, especially in regards to highway signs. He also stated that the current $25 fine is not much of a deterent. It is his belief that a $500 fine, plus the possibility of jail time would have a much greater effect on would-be offenders.

Representative Addy testified that the discharging of firearms may be a minor offense, but it can also constitute a real threat to society. Representative Addy feels more discretion in sentencing should be given to the judge.

Marcel Turcotte testified that this bill contained a fail-safe mechanism. People have, under Section 42-17-311, MCA, a trial de novo, which means a person sentenced in Justice Court who feels his penalty is excessive, can go to District Court for a new trial as if no previous trial ever existed. Mr. Turcotte feels that the District Courts have a large enough case load. It is

ACTION ON HOUSE BILL 245: It was moved the term "office" be used instead of "offices" and the other proposed amendments be adopted. The proposed amendments carried unanimously. It was then moved that HB245 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HOUSE BILL 429: The Committee was concerned with cities not being able to control the problem of discharging firearms within the city by their own ordinance. Senator Turnage suggested that cities be allowed to determine any penalty over $25. It was moved the proposed amendments BE ADOPTED. he motion carried with Senator Crippen voting in opposition. It was then moved that HB429 BE CONCURRED IN AS AMENDED. This motion carried with Senator Crippen voting in opposition.

ACTION ON HOUSE BILL 507: Senator Daniels suggested replacing $10 with $7.50 in subsections (1), (2), (3), (4) and (5), and to replace "filing" with "issuing" on p. 2, line 10. He then moved that the amendments BE ADOPTED. The motion carried unanimously. It was then moved that HB507 BE CONCURRED IN AS AMENDED. This motion carried unanimously.

There being no further action to come before the Committee, the meeting was adjourned at 11:45 a.m.

Jean A. Turnage

JEAN A. TURNAGE, Chairman

STANDING COMMITTEE REPORT

March 11 19 93

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 245

Addy (Mazurek)

Respectfully report as follows: That HOUSE Bill No. 245

third reading, be amended as follows:

1. Page 1, line 14.
Following: "business."
Insert: "(1)"

2. Page 1, line 20.
Strike: "THE STATE OF MONTANA OR ANY PART thereof"
Insert: "the areas provided in subsection (2)"

3. Page 1, line 25.
Following: "~~.~~"
Insert: "(2) The agreement authorized in subsection (1) may apply in:
(a) the city where the principal office of the business is located;
(b) the county where the principal office of the business is located;
(c) a city in any county adjacent to the county in which the principal office of the business is located;

DO PASS ~~AS AMENDED~~

Continued on page 2

JEAN A. TURNAGE Chairman.

STATE PUB. CO.
Helena, Mont.

HC 27

March 11, 19 83

(d) Any county adjacent to the county in which the principal office of the business is located; or
(e) any combination of the foregoing."

4. Page 2, lines 11 and 12.
Strike: "THE STATE OF MONTANA OR ANY PART THERE OF"
Insert: "the areas provided in 28-2-704(2)"

And,
As so amended,
BE CONCURRED IN

STATE PUB. CO.
Helena, Mont.

JEAN A. TURNAGE Chairman.

HOUSE BILL NO. 245

INTRODUCED BY ADDY, J. JENSEN, BERGENE

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXPAND THE GEOGRAPHICAL AREA THAT MAY BE COVERED BY CONTRACTS NOT TO COMPETE AND TO PROVIDE THAT ~~SUCH--CONTRACTS--MAY--NOT--COVER LICENSED--PROFESSIONS--AND--OCCUPATIONS~~ WHEN SUCH CONTRACTS CONCERN PARTNERSHIPS THEY MAY ONLY BE MADE UPON DISSOLUTION OF PARTNERSHIP; AMENDING SECTIONS 28-2-704 AND 28-2-705, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 28-2-704, MCA, is amended to read:

"28-2-704. Exception -- sale of goodwill of business. (1) One who sells the goodwill of a ~~profession--trade--or~~ business may agree with the buyer to refrain from carrying on a similar ~~profession--trade--or~~ business within a ~~specified--county,--city--or--part any--state--or--territory--of the--United--States--or--the--District--of--Columbia--or--any--part--or parts~~ THE ~~STATE--OF--MONTANA--OR--ANY--PART~~ thereof AREAS PROVIDED IN SUBSECTION (2) so long as the buyer or any person deriving title to the goodwill from him carries on a like ~~profession--trade--or~~ business therein. ~~However,--such an--agreement--may--not--be--made--when--the--seller--is--selling--the goodwill--of--a--profession--or--occupation--for--which--a--license is--required--under--Title--37.~~

(2) THE AGREEMENT AUTHORIZED IN SUBSECTION (1) MAY APPLY IN:

(A) THE CITY WHERE THE PRINCIPAL OFFICE OF THE BUSINESS IS LOCATED;

(B) THE COUNTY WHERE THE PRINCIPAL OFFICE OF THE BUSINESS IS LOCATED;

(C) A CITY IN ANY COUNTY ADJACENT TO THE COUNTY IN WHICH THE PRINCIPAL OFFICE OF THE BUSINESS IS LOCATED;

(D) ANY COUNTY ADJACENT TO THE COUNTY IN WHICH THE PRINCIPAL OFFICE OF THE BUSINESS IS LOCATED; OR

(E) ANY COMBINATION OF THE FOREGOING."

Section 2. Section 28-2-705, MCA, is amended to read:

"28-2-705. Exception -- dissolution of partnership. Partners may, upon ~~or--in--anticipation--of--a~~ dissolution of the partnership, agree that none ONE OR MORE of them ~~will~~ MAY NOT carry on a similar ~~profession--trade--or~~ business within ~~the--same--city--or--town--where--the--partnership--business has--been--transacted--or--within--a--specified--part--thereof any state--or--territory--of--the--United--States--or--the--District--of Columbia--or--any--part--or--parts--thereof. However,--such an agreement--may--not--be--made--as--to--a--profession--or--occupation for--which--a--license--is--required--under--Title--37~~ THE STATE OF MONTANA OR ANY PART THEREOF AREAS PROVIDED IN 28-2-704(2)."

-End-

REFERENCE BILL